In The

Supreme Court of the United States

OCTOBER TERM, 1973

LOCAL 66, BOSTON TEACHERS UNION, AFT, AFL-CIO,

Petitioner,

—v.—

BOSTON SCHOOL COMMITTEE, ET AL.,

Respondents.

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* AND BRIEF *AMICUS CURIAE* OF THE A. PHILIP RANDOLPH INSTITUTE IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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LOCAL 66, BOSTON TEACHERS UNION, AFT, AFL-CIO
Petitioner,

v.

BOSTON SCHOOL COMMITTEE, ET AL.,
Respondents.

Case No. 81-2306

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*

The A. Philip Randolph Institute ("APRI") respectfully moves for leave to file the attached brief *Amicus Curiae* in this case. The consent of the attorney for the Petitioner has been obtained. The consent for the attorneys for respondents, Boston School Committee, Massachusetts Board and Commissioner of Education and El Comite de Padres has also been obtained. Consent of the attorney for Respondent, Talulah Morgan, *et al.* was requested but refused. As of this date, the attorney for Respondents, Concerned Black Educators of Boston has failed to respond to our request for consent.

The APRI is a national organization of black trade unionists and others committed to the principles espoused by A. Philip Randolph, America's foremost Black labor leader. These principles include commitments to racial integration and the principles of unionism.

Since 1965 the APRI, through more than 180 local affiliates throughout the country, has worked to advance the social and economic interests of black Americans by supporting and sponsoring education and training, advancing voter registration, trade union activities and law reform.

The APRI moves to participate in this matter as *Amicus*

Curiae to address the issues raised in the petition of the Boston Teachers Union from the APRI's unique perspective. This perspective opposes mechanisms which, although well-intended, abrogate the seniority principle, create new victims of race discrimination, and pit worker against worker on the basis of race.

The APRI participated as *Amicus Curiae* in the United States Court of Appeals for the First Circuit.

WHEREFORE, APRI respectfully moves this Court for leave to file the brief *Amicus Curiae* attached hereto.

Respectfully submitted,

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Question Presented

Whether a federal district court can invalidate a bona fide, collectively-bargained seniority system, resulting in the discharge of innocent white teachers while preserving the employment of less senior black teachers and permitting the employment of new black teachers with no seniority, though none of these black teachers is a discrimination victim, in order to preserve a racial balance among the faculty in a school desegregation case?

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BRIEF *AMICUS CURIAE* OF THE A. PHILIP RANDOLPH INSTITUTE IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

The A. Philip Randolph Institute ("APRI"), upon the motion for leave to file as *Amicus Curiae*,* respectfully submits this brief *Amicus Curiae* in support of the Petition for Writ of Certiorari filed by Local 66, Boston Teachers Union, AFT, AFL-CIO.

Interest of *Amicus Curiae*

The A. Philip Randolph Institute is a national organization of black trade unionists and others committed to the principles espoused by A. Philip Randolph, America's foremost black labor leader. These principles, in brief, include:

1. A commitment to political democracy for all people, whether in the United States or abroad.
2. A commitment to the principles of unionism.
3. A commitment to racial integration.

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*The consents as noted in the motion for leave to file as *Amicus Curiae* have been filed with the Clerk of the Court.

The A. Philip Randolph Institute has a national reputation as a vital and creative force within the black community, and an organization of the utmost integrity. The Institute, through more than 180 local affiliates throughout the United States, works to advance the social and economic interests of black Americans. The Institute supports and sponsors education and training, voter registration and programs to increase black political participation, trade union activity, and other activity consistent with its commitment to social equality.

The A. Philip Randolph Institute participates as *Amicus Curiae* in support of the Boston Teachers Union in this Court, as it did in the Court of Appeals for the First Circuit, because of the Institute's commitment to social equality. The Institute is vitally interested in safeguarding the equitable principle of seniority which treats workers on a fair and rational basis, not related to race, religion, creed or sex. The Institute opposes mechanisms which, though well-intended, abrogate the seniority principle, create new innocent victims of race discrimination, and pit worker against worker on the basis of race. Such a mechanism was approved by the Court of Appeals for the First Circuit.

Accordingly, the A. Philip Randolph Institute offers this Court its perspective and submits this brief *Amicus Curiae* in support of the Boston Teachers Union's Petition for Writ of Certiorari.

Statement of the Case

On June 2, 1981, Judge Garrity of the United States District Court for the District of Massachusetts ordered, on the motion of the Boston School Committee, that (a) Boston teachers be laid off from their employment "in such a way that the system-wide percentage of black teachers will remain at the current level of 10.09%, and the system-wide percentage of other minority teachers will remain at its current level", (b) "[b]lacks will receive an absolute preference for recall until a 20% figure is reached system-wide . . ." and (c) "[o]nce this 20% figure is reached, no fewer than 20% of the teachers subsequently recalled

or recruited will be black." Conditional Order Modifying Faculty Desegregation Orders. (Petitioner's Appendix A-18).

Judge Garrity's order permitted the Boston School Committee to breach the job security and seniority provisions in the collective bargaining agreement between the School Commitee and the Boston Teachers Union.* It permitted the School Commitee to discharge innocent white teachers, to perserve the jobs of less senior black teachers, and to recruit new black teachers with no seniority while senior white teachers remain unemployed.

The Court of Appeals for the First Circuit approved Judge Garrity's order. *Morgan* v. *O'Bryant*, 671 F.2d 23 (1st Cir. 1982); Petitioner's Appendix A-2. The First Circuit justified the invalidation of the seniority system and the discharge of senior white teachers as necessary to provide relief to black Boston school children by maintaining the percentage of black teachers at 20% and by providing black adult role models.

Judge Garrity permitted no evidentiary hearing in the District Court and the Court of Appeals had no factual record to review.

The A. Philip Randolph Institute believes that the invalidation of a bona fide, collectively bargained seniority system and the discharge of senior white teachers ordered by the District Court and approved by the First Circuit is inequitable, unlawful, unsupported by a factual basis, and inconsistent with the interests of the black community as well as the interests of all Americans.

Reasons for Granting the Writ

At the outset, it is useful to consider what this case is not.

It is not a case of employment discrimination. It is not a case in which individual victims of race discrimination are seeking a

*Contract between the Boston Teachers Union, Local 66, AFT, AFL-CIO and the School Committee of the City of Boston, Art. IVA §5 and Art. IVC §§16, 17; Petitioner's Appendix A-31.

remedy. There are no identifiable employment discrimination victims to be made whole.

Where individual black and minority workers are discrimination victims, it is just to advance them to their rightful places. It is appropriate to adjust their seniority to where it would have been but for the discrimination against them. *Franks* v. *Bowman Transportation Co.*, 424 U.S. 747 (1976); *International Brotherhood of Teamsters* v. *United States*, 431 U.S. 324 (1977). This is not such a case.

This is a case in which black and minority workers have been given preferential job security. They have been given job security not on the basis of earned seniority but on the basis of race. Though they have not been wronged, they have been given preferential job security at substantial cost.

This cost includes the abrogation of the seniority principles and the undermining of the representative of all Boston teachers, the Boston Teachers Union. It includes the loss of livelihood of hundreds of Boston teachers, innocent of wrongdoing, who are denied job security because they are white.

Preferential job security may be of some benefit to black school children, though the benefit to them is assumed by the courts below, not defined or supported by any evidence. It may be of short-range personal benefit to those black and minority teachers who retain their jobs out of seniority order. It will be of long-range detriment, however, to all blacks and to the cause of social equality. It is detrimental because it undermines unions, compromises the concept of equality embodied in the seniority principle, and puts worker against worker on the basis of race.

Blacks have a significant interest in the strength and viability of labor unions such as the Boston Teachers Union. Unions are the most integrated institutions in American society. The union movement fought harder, longer and more effectively than any other institution to improve job opportunities for minority workers. Through unions, black workers were initially integrated

into American economic and political life and the labor movement has been one of the oldest and staunchest allies in the struggle for civil rights. In the words of A. Philip Randolph:

> In concert with their fellow workers, Black people can take decisive control of their own destinies; with a union, they can approach their employers as proud and upright equals, not as trembling and bowing slaves. Indeed, a solid union contract is, in a very real sense, another Emancipation Proclamation.

The late Dr. Martin Luther King, Jr., addressing the 1961 AFL-CIO Convention, remarked on the unity of interests shared by blacks and the labor movement:

> Negroes are almost entirely a working people . . . Our needs are identical with labor's needs—decent wages, fair working conditions, livable housing, old-age security, health and welfare measures, conditions in which families can grow, have education for their children and respect in the community.

Quoted in B. Rustin, "The Blacks and the Unions", 242 *Harper's Magazine* 75 (May, 1971).

Dr. King's words are as true today as they were twenty years ago. An essential need shared today as then by all workers, black and white, is adherence to the seniority principle.

Seniority is a fundamental principle of the labor movement. A. Philip Randolph Institute Chairman Bayard Rustin and President Norman Hill have written:

> Seniority is an equitable principle; it treats workers on a fair and rational basis not related to race, religion, creed or sex. But it is more than this. It is a just and humanitarian principle accepted overwhelmingly by the American people.

B. Rustin & N. Hill, *Seniority and Racial Progress*, (A. Philip Randolph Institute, 1976).

The seniority principle, obtained through collective bargaining, has been the most effective mechanism in the struggle for equal opportunity for black and minority workers. Through union contracts with the force of law, the seniority principle has served well the rights of black and minority workers. To black workers, as to all workers, seniority is "of overriding importance." *Humphrey* v. *Moore*, 375 U.S. 335, 346 (1964).

The District Court order abrogates the seniority and job security provisions in the collective bargaining agreement negotiated on behalf of all Boston teachers. In doing so, the order undermines the strength and effectiveness of the Union and tragically compromises the concept of equality embodied in the seniority principle. Both effects are contrary to the interests of blacks.

It is no exaggeration to assert that the advances and setbacks of black workers are, in large measure, reflective of the victories and defeats of the trade union movement. Court sanctioned abrogation of the seniority principle is a tragic defeat.

In abrogation the seniority and job security provisions in the collective bargaining agreement, the order requires the discharge of white teachers who have not engaged in any discriminatory action, in favor of less senior black teachers who are not identifiable victims of discrimination. In doing so, the order creates a new set of victims of discrimination.

The moral force of the movement for social equality is diluted when the victims become the victimizers. Those who have known racism and exploitation have an obligation to avoid perpetrating these evils against others.

The fruit of the order is bitter. Abrogation of the seniority principle and court-sanctioned racial preference at the expense of innocent white teachers creates a racial wedge between workers. The order, intended to foster integration, has the opposite effect. Rustin and Hill have written:

> [W]e want to emphasize that the reaction of white workers to the loss of seniority would not be racial. What whites

> would object to is not a black getting a job, but losing their own. Of course, their frustrations at what they would see as a monumental injustice would be expressed in racial terms.
>
> But whites with seniority would react just as violently if these taking their jobs were some other ethnic group or if the beneficiaries were younger whites.
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> * * * * *
>
> The argument over seniority only appears to divide workers along racial lines. The real division is between those who have more and those who have less seniority. In fact, it is conceivable that situations will arise where blacks are asked to give up the protection of accumulated seniority in order to protect some other group. There is a relatively simple way for blacks to understand why whites oppose breaking seniority rights. Ask black men with four years seniority if they will give up their jobs for women with two years seniority, for black women with two years seniority. We have frequently asked such questions and have, thus far, found no one who accepts such a principle. Whites oppose giving up their jobs to insure a certain percentage of black workers for precisely the same reasons that black men resist giving up their jobs to insure a certain percentage of women workers.

Seniority and Racial Progress, supra, at 4-5.

Racial division is an inevitable cost of the order. It fuels anti-black political movements and results in the withdrawal of white political and economic support for social and political programs that require legislative action to further the black cause. The racial character that attaches to controversy over preferential job security presents the opportunity for the worst sort of racial demagogues to further separate whites and blacks. The order can no more be justified politically than it can legally or morally.

The order is doubtless a well-intended effort to foster school desegregation. That it is well-intended makes it all the more

tragic that it is misguided. The order trades of the significant long term interests of all blacks in a strong labor movement. It undermines the humanitarian principle of seniority. It contributes to racial division by sanctioning the creation of new victims of race discrimination. It does these things to gain a short term personal benefit for a few interested persons and to satisfy a numerical formula.

School desegregation is a noble end that cannot be accomplished by ignoble means. The order is morally and legally unjustified and contrary to the interests of blacks and of all Americans.

CONCLUSION

Whether a federal district court can invalidate a bona fide, collectively-bargained seniority system, resulting in the discharge of innocent white teachers while preserving the employment of less senior black teachers and permitting the employment of new black teachers with no seniority, though none of these black teachers is a discrimination victim, in order to preserve racial balance among the faculty in a school desegregation case? This is the important legal question presented. Whether one court's notion of appropriate racial balance justifies violation of the seniority principle and the creation of new victims of race discrimination is a social and moral question as well.

The A. Philip Randolph Institute urges this Court to grant the Boston Teachers Union's Petition for Writ of Certiorari and to address these important questions of law and social justice.

Respectfully submitted,

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